THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.11479 of 2001

ORAL ORDER:

This Writ Petition is filed seeking a Mandamus declaring the auction conducted by respondents 3 and 4 on 10-3-2000 in respect of CEP No.204/97-98 along with CEP No.166/1999-2000 as arbitrary and illegal and consequently to set aside the Proceedings dated 18-8-2000 of the 2nd respondent as confirmed by the 1st respondent in his Proceedings Rc.No.40438/2000-L 1, dated 12-3-2001.

It appears that the writ petitioner (since died) obtained loan from the erstwhile Primary Agricultural Cooperative Society, Ramachandrapuram, which was subsequently merged with the District Cooperative Central Bank Limited, Kakinada by mortgaging his lands. When he failed to pay the instalments and fell in arrears, proceedings were taken up and he was made liable to pay an amount of Rs.50,976/- with interest. Thus, he became the judgment-debtor in C.E.P.No.204/97-98. Respondents 2 and 3 fixed the sale of the schedule property in the said CEP at Branch Office at DCC Bank, Draksharama on 10-3-2000. Respondent No.4 is the decree-holder and respondent No.5 is the highest bidder in the auction in the said C.E.P. According to the petitioner, there are several material irregularities in fixing the sale and conducting the sale in C.E.P. No.204/97-98 inasmuch as there was no open auction conducted and the auction was conducted in collusion with respondents 3 and 4. Under those circumstances, he filed objections under Section 52(14) of the A.P. Cooperative Societies Rules,1964 (for short 'the Rules') before the 2nd respondent with a request to enquire into the purported sale in C.E.P.No.204/97-98 on 10-3-2000. However, the 2nd

respondent without making any detailed enquiry into the matter and also without giving any opportunity to him, confirmed the sale by an Order dated 18-8-2000. Aggrieved by the same, he filed a revision before the 2nd respondent. But the same was dismissed on 12-3-2001. Hence, this Writ Petition.

According to the petitioner, he is the owner of Ac.6.96 cts, which was shown in the schedule of the sale notice and by mortgaging the land, he had obtained loan from the 4th respondent-Bank. Respondent-Bank issued a sale notice mentioning that the petitioner is due an amount of Rs.50,976/- together with interest and costs. The sale was fixed at 11.00 a.m. on 10-3-2000 at D.C.C.Bank Branch at Draksharama. While so, there was another Execution Proceeding in C.E.P.No.166/99-2000 for which the sale was fixed on 22-3-2000. Accordingly, he attended the Branch Office of the 4th respondent at 10.00 a.m., approached the 3rd respondent and tendered payment in C.E.P.No.204/97-98. Respondent No.3 made him to wait till 5.00 p.m. and demanded payment of Rs.25,000/- in respect of C.E.P.No.166/99-2000, which is nothing to do with the auction in C.E.P.No.204/97-98. Even though he requested to accept the amount in C.E.P.No.204/97-98, 3rd respondent declined to accept the payment and erroneously recorded the sale as if the auction was conducted after 6.00 p.m. on 10-3-2000. The Sale Officer did not conduct any auction on 10-3-2000 at District Cooperative Central Bank Branch, Draksharama and he erroneously mixed up C.E.P.No.166/99-2000 with C.E.P.No.204/97-98 and shown to have conducted the sale for realization of the amounts pending for the two E.Ps, even though the sale of C.E.P.No.166/99-2000 was fixed on 22-3-2000. No procedure known to law, particularly, the procedure under Rules 52

and 53 of the Rules has been followed in conducting the auction. There is no provision under the law for merging the auction, which was to be held on a future date, with an auction to be held earlier to that, in the guise that the loanee is also due to that amount. Further, the petitioner asserted that Ac.1.00 of land was sold for too low an amount of Rs.1,26,000/- and since the property is situated in Ramachandrapuram Mandal and is a double crop wet land, its value would be much higher. The value of the land situated in Jagannayakulapalem is about Rs.3.00 lakhs per acre. Even though he submitted a sale deed, which reveals that Ac.0.30 cts of land at Jagannayakulapalem was sold at Rs.90,000/- and the Mandal Revenue Officer has also given a certificate stating that the market value of his lands is Rs.3,00,000/- per acre, respondents 3 and 4 ignored the same and *mala fidely,* intentionally and mischievously sold his lands to their interested parties at a very low cost, which is arbitrary and illegal.

Detailed and separate counter affidavits have been filed by respondents 3 and 5 denying the allegations made by the petitioner and asserting that respondents 3 and 4 have all the power under the law to conduct auction together for the properties under C.E.P.No.204/97-98 and C.E.P.No.166/99-2000, for which the auction date was fixed on 10-3-2000 itself. There is no illegality committed by the respondent No.3 in conducting the auction; therefore, the 2nd respondent has rightly confirmed the sale, which was correctly affirmed by the 1st respondent. As such, the impugned Orders do not call for interference of this Court.

Learned counsel for the petitioner strenuously contended that Rule 53(2)(a) of the Rules contemplates that the sale shall be held in the village where the mortgaged property is situated or at

the nearest point of public resort, if the Sale Officer is of the opinion that the property is likely to sell for better advantage there. Whereas, in this case, the auction was conducted at the Branch Office of the Bank, which is far away from the place where the mortgaged property is located. Further, absolutely there is no provision under the law for clubbing two auctions, which were contemplated to be conducted on different dates and the amount offered was very less when compared to the market value of the lands in the area.

Learned counsel appearing for the respondent-Bank as well as the 5th respondent have strenuously contended that there is some overlapping of the properties contemplated to be auctioned on 10-3-2000 and 22-3-2000; therefore, the auction was to be conducted only on 10-3-2000 for realization of the amounts against both the Execution Petitions. There is no prohibition under the law for adopting such a procedure. Further, the upset price fixed was proper; as such, no interference is called for by this Court with the impugned Orders.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and gone through the impugned Orders and other material made available on record.

There is no necessity of going into all the details. It is suffice to notice that the date of sale of the properties under C.E.P.No.204/97-98 was fixed as 10-3-2000, whereas the properties under C.E.P.No.166/99-2000 were contemplated to be auctioned on 22-3-2000. May be, in a given case, it is necessary to avoid conflicting interest to club and conduct the auctions together. But, no notice of any kind has been issued to the petitioner before doing so. Therefore, the question of giving sufficient time for the bidders to participate in the

auction also does not arise. Apart from this, the petitioner filed documents to show that an extent of Ac.0.30 cts of land in the same village of Jagannayakulapalem was sold for Rs.90,000/- (about Rs.3.00 lakhs per acre). This fact is not in dispute except stating as to the advantage of the location where Ac.0.30 cts of land is sold. This was not taken into consideration by the authorities. Probably, as stated by the petitioner that if both the E.Ps were merged and proper publication was given, definitely, the respondent-Bank could have fetched more value for the schedule property. In all, Ac.1.00 of land was sold in the auction for Rs.1,26,000/- which when compared with the sale deed filed by the petitioner is too low an amount. Thus, when the properties contemplated to be auctioned on 10-3-2000 and 22-3-2000, there was no proper publication nor the petitioner was put on notice as to the clubbing of two auctions together nor the public are aware of the same. Further, it is interesting to notice that the total land in R.S.No.80/1 of Jagannayakulapalem was shown as Ac.2.42 cts and only Ac.1.00 of land was put to auction. If that is so, there was no necessity of showing the entire extent of Ac.2.42 cts in the auction notice. Which part of the mortgaged property of Ac.2.42 cts making it to Ac.1.00 was to be sold, is also not known. Therefore, the impugned Orders are passed against the procedure and in gross violation of principles of natural justice and as such, they are liable to be set aside.

At the time of admission of Writ Petition on 13-6-2001, this Court in W.P.M.P.No.14226 of 2001 granted status quo with respect to the property of Ac.1.00, out of the total extent of Ac.2.42 cts in R.S.No.80/1 situated at Jagannayakulapalem, East Godavary District, on condition that the petitioner deposits entire decretal amount together with interest thereon to the credit of C.E.P.No.204/97-98 within four weeks. Further, it was directed that the 4th respondent shall, on the petitioner

depositing the said amount, keep the same in a separate account. Thereafter, the interim order was continued and the Writ Petition itself was directed to be posted for final hearing; thus, the Writ Petition has come up for hearing. This shows that the petitioner has already deposited the entire decretal amount. Therefore, there is no necessity for the respondents to proceed with the matter further.

Accordingly, the Writ Petition is allowed and the impugned Orders are set aside. No order as to costs.

11-12-2006

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